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Patent No. 5,779,392
Application No. 08/719,520 ✓

Page 8

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Conferee: Anthony Knight, Director of the Office of Petitions

Enclosures: Forms PTO/SB/65 and PTO/SB/123

Cc: KENWOOD ROSS AND OR CHESTER E FLAVIN
120 MAPLE STREET
SPRINGFIELD MA 01103

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Joseph B. Mendes
28701 SW 182 Ave.
Homestead, FL 33033

MAILED
JUN 11 2012
OFFICE OF PETITIONS

In re Patent No. 5,779,392	:	
Issue Date: July 14, 1998	:	DECISION ON PETITION
Application No. 08/719,520	:	
Filed: SYSTEMS FOR CONTAINING AND	:	
COLLECTING OIL SPILLS	:	

This is a decision on the petition under 37 CFR 1.378(b), filed April 23, 2012, to accept the delayed payment of the second and third maintenance fees for the above-identified patent.

The petition under 37 CFR 1.378(b) is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below because the Director will not undertake any further reconsideration or review of the matter after a decision on the petition for reconsideration.

The above-identified patent issued on July 14, 1998. The second maintenance fee could have been paid during the period from July 14, 2005 through January 17, 2006 or with a surcharge during the period from January 18, 2006 through July 14, 2006. Accordingly, the above-identified patent expired on July 15, 2006, for failure to timely remit the second maintenance fee.

On January 11, 2012, petitioner filed a petition under 37 CFR 1.378(b), requesting the acceptance of the late payment of the maintenance fees for the above-identified patent due at 7.5 and 11.5 years. On April 2, 2012, the Office mailed a Request for Further Information. In response, petitioner filed the present petition under 37 CFR 1.378(b) on April 23, 2012.

In support of the petition, petitioner asserts:

The timely payment of maintenance fees were unavoidably delayed due to catastrophic health reasons. Our first maintenance payment was due in the first quarter of 2006. My disabilities first appeared in 2003 as is listed below. They continued to limit my ability to work throughout 2010 when the next maintenance payment was due. I have talked with several representative of the U.S. Patent Office to learn what is required to resolve this issue. I have spent many countless hours gathering supporting evidence of my ongoing health problems, as is evidenced by the amount of paperwork attached (see attached for supporting documentation.) It is my sincere desire to fulfill my obligations regarding my patent.

- In November of 2003 I received a diagnosis of a pseudotumor/shingles in the right eye. This event resulted in permanent scarring of the cornea, which prevented me from daily activities such as driving and using a computer.
- In January of 2004 I suffered a severe stroke. It resulted in full paralysis of my left side. I was unable to sit or stand on my own. Years of therapy ensued until only a basic amount of mobility had been achieved. My fields of vision were permanently damaged.
- In July of 2008, I suffered a type heart attack known as the "widow maker." Three stents were installed with therapy to follow.
- In November of 2009 I had an unsuccessful ankle replacement. The prosthesis was loose inside the ankle and caused me to be confined to a wheel chair for approximately a year and a half.
- In October of 2010 I had the corrective surgery for the ankle. Again, I was not ambulatory for about six months.
- In October of 2011, I had additional foot and ankle surgery, part of which was corrective measures to repair stroke damage. The surgery realigned my gait and helps to correct a dropped foot. I am still not fully ambulatory.

Copies of petitioner's medical records and letters from his treating physicians accompany the petition.

A petition under 37 CFR 1.378(b) to accept late payment of a maintenance fee must include:

- (1) the required maintenance fee set forth in § 1.20(e) through (g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct

knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. 133. This is a very stringent standard. As stated in Section 711.03(c)(II)(C)(2) of the Manual of Patent Examining Procedure:

Decisions on reviving abandoned applications on the basis of “unavoidable” delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word ‘unavoidable’ . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm’r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff’d, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm’r Pat. 139, 141 (1913). In addition, decisions on revival are made on a “case-by-case basis, taking all the facts and circumstances into account.” Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was “unavoidable.” Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Section 2590(I) of the Manual of Patent Examining Procedure further explains:

As 35 U.S.C. 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. [Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995).] That is, an adequate showing that the delay in payment of the maintenance fee at issue was “unavoidable” within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3)

preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. [See In re Patent No. 4,409,763, 7 USPQ2d 1798 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992)).] See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.

Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

In determining whether the delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray v. Lehman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995). The patent owner at the time of the expiration of the patent is ultimately the person responsible to ensure the timely payment of the maintenance fees. The patent owner may engage another to track and/or pay the maintenance fees; however, merely engaging another does not relieve the patent owner from his obligation to take appropriate steps to ensure the timely payment of such maintenance fees. See California Medical Prods. v. Tecnol Medical Prods., 921 F. Supp. 1219 (D. Del. 1995). In this instance, petitioner was the patent owner at the time of the expiration of the patent, and therefore, petitioner had an obligation to ensure the timely payment of the maintenance fee.

While physical incapacitation can be a cause of delay, a showing of "unavoidable" delay based upon incapacitation must establish that petitioner's incapacitation was of such a nature and degree as to render petitioner unable to conduct business (e.g. correspond with the Office) during the entire period from when the maintenance fee was due until the filing of a grantable petition. Such a showing must be supported by a statement from petitioner's treating physician(s), and such statement must provide the nature and degree of petitioner's incapacitation during the entire aforementioned period.

As a threshold matter, the Office notes that an adequate showing of unavoidable delay in payment of the maintenance fee requires a demonstration of the steps that were taken to ensure the timely payment of the maintenance fees for this patent. In the absence of a showing that petitioner was (1) aware of need to pay the second and third maintenance fees and (2) he took steps to ensure timely payment, 37 CFR 1.378(b) precludes acceptance of the payment. In other words, if petitioner was unaware of the need to pay the maintenance fees and no steps were taken by petitioner to track the maintenance fee due dates and ensure timely payment, then any concurrent and subsequent health problems of petitioner would be immaterial to the delay. The showing must be that when the petitioner's system indicated the maintenance fees fell due, his health problems "unavoidably" prevented him from taking any earlier action with respect to this patent.

In the Requirement for Information, mailed April 2, 2012, the Office requested that petitioner show that the maintenance fee due date for this patent had in fact been entered in a maintenance fee tracking system. Additionally, the Office urged petitioner to provide a statement as to how that system operated and to include any supporting documentation. In response, petitioner provided a letter dated October 27, 2005, from Carol Ann M. Slivinskas, a Tax Administrator at McCormick, Paulding & Huber LLP, to petitioner regarding payment of the maintenance fee for this patent. The letter requested that petitioner return the form to her by December 1, 2005, with instructions to either mark "P" to pay the maintenance fee, accompanied a check in the appropriate amount, or to mark "C" to cancel and make no payment of the maintenance fee. The letter advised petitioner that failure to provide payment of the maintenance fee would result in a lapse of the patent. Unfortunately, petitioner did not provide the USPTO with a copy of the enclosures that accompanied the letter. Additionally, petitioner did not specifically indicate whether he or his designee had completed and returned the form (marking "P" or "C") by the date requested. Lastly, petitioner did not indicate if he had any further communications with a member of the firm regarding payment of the maintenance fee. Accordingly, petitioner must provide the USPTO with a copy of the enclosures and a statement from his former patent practitioner, Chester Flavin, regarding any communications between them regarding the payment of the second or third maintenance fees.

Additionally, the Office requested that petitioner submit further information demonstrating that his medical incapacitation was of such a nature and degree as to render him unable to conduct business (e.g., correspond with the Office) during the entire period from the maintenance fee was due on July 14, 2006, to the present. The Office asked petitioner to explain how he was able to travel to and from medical appointments, pay his bills, and maintain his affairs during this period of time, but was unable to make timely payment of his maintenance fees. Furthermore, the Office requested that petitioner state why he did not enlist the aid of others to assist him in managing his patent affairs to ensure the timely payment of the maintenance fee as a reasonable and prudent person would have done with respect to his most important business. In response to these request, petitioner provided a signed and notarized affidavit from his wife stating:

THIS IS TO AFFIRM THAT ALTHOUGH MY HUSBAND, JOSEPH MENDES AND I DID RECEIVE NOTIFICATION FROM OUR PATENT ATTORNEY OF THE REQUIREMENT TO PAY MAINTANENCE FEES DUE ON HIS PATENT, MY HUSBAND'S HEALTH ISSUES WERE DEBILITATING ENOUGH TO PREVENT US FROM ATTENDING TO THEM IN A TIMELY MANNER. AS DETAILED IN THE SHOWING, HIS SERIES OF HEALTH ISSUES

REQUIRED HIM TO HAVE 24 HOUR A DAY ASSISTANCE WITH BASIC LIFE FUNCTIONS SUCH AS EATING, BATHING, READING AND GETTING TO AND FROM THE BATHROOM. THE AMOUNT OF TIME AND ATTENTION REQUIRED TO MANAGE HIS HEALTH NEEDS, MY OWN NEEDS AND OUR MUTUAL INTERESTS WERE OVERWHELMING. I SIGNED FOR A CERTIFIED LETTER FROM OUR PATENT ATTORNEY REMINDING US OF THE FEES OWED. A COPY OF THE REMINDER LETTER IS ATTACHED. BECAUSE THIS TASK WAS NOT ESSENTIAL TO THE NECESSITIES OF LIFE, IT UNFORTUNETLY BECAME COMPROMISED.

MY HUSBAND DID NOT RETURN TO WORK AFTER HIS STROKE. HIS REHABILITATION HAS BEEN EXTENSIVE, REQUIRING YEARS OCCUPATIONAL AND PHYSICAL THERAPY. IMPROVING HIS VISION IS AN ONGOING TASK. THE FAILURE TO PAY MAINTANENCE FEES WAS NOT DUE TO IGNORANCE OR THE LACK OF WILLINGNESS TO PAY. IT WAS SIMPLY TRYING TO MAINTAIN THE ESSENTIALS OF LIFE.

INCLUDED IN OUR PREVIOUSLY SUBMITTED SHOWING IS EXTENSIVE DOCUMENTATION FROM MANY PHYSCIANS AND HOSPITALS INVOLVED IN MY HUSBANDS CARE FROM 2003 TO THE PRESENT. IT IS OUR INTENTION TO PRESENT A CLEAR AND USABLE TIMELINE OF THE ISSUES THAT PREVENTED US FROM FULFILLING OUR OBLIGATION TO THE PATENT OFFICE. PLEASE CONTACT US IF ANY ADDITIONAL INFORMATION IS REQUIRED.

While the Office is very sympathetic to petitioner's medical condition and the hardships he and his wife endured, petitioner has not shown that he acted diligently or took adequate steps to ensure the timely payment of the maintenance fees, which is essential to support a finding of unavoidable delay. See Futures Technology, Ltd. v. Quigg, 684 F. Supp. 430, 431, 7 USPQ2d 1588 (E.D. Va. 1988) (applicant's diligent inquiry into the status of the application is required to show unavoidable delay); Douglas v. Manbeck, 21 USPQ2d 1697, 1699-1700 (E.D. Pa. 1991), aff'd, 975 F.2d 869, 24 USPQ2d 1318 (Fed. Cir. 1992) (even representation by counsel does not relieve the applicant from his obligation to exercise diligence before the USPTO; applicant's lack of diligence extending two and one half years overcame and superseded any omissions by his counsel). There is no "sliding scale" based upon the priority given to maintaining this patent in force, or more diligently seeking reinstatement, *vis-à-vis* other matters. The issue is solely whether the maintenance, or reinstatement, of the patent at issue was conducted with the care or diligence that is generally used and observed by prudent and careful persons in relation to their most important business. Petitioner and his wife assert that petitioner's medical needs were overwhelming causing the timely payment of the maintenance fee to become compromised. Nevertheless, it would appear that that petitioner or petitioner's designee were able to pay his bills for his medical costs and living expenses, as well as maintained his affairs for over five years (from due date for the maintenance fee on July 14, 2006, to the filing of the initial petition); however, they assert that they were unable to pay the maintenance fee.¹ The record fails to adequately evidence that petitioner exercised the due care and diligence observed by prudent and careful persons,

¹ Preoccupation with other matters which took precedence over timely payment of the maintenance fee, as harsh as that may seem does not constitute unavoidable delay. See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

in relation to their most important business necessary to establish unavoidable delay. See Ex parte Pratt, 1187 Dec. Comm'r Pat. 31-32-33 (Comm'r Pat 1887). Moreover, petitioner did not demonstrate that steps were taken to ensure the timely payment of the maintenance fees.

Lastly, petitioner has failed to show that his medical condition rendered him unable to conduct business (e.g., correspond with the Office) during the entire period from the last day the maintenance fee could have been paid on July 14, 2006, to the filing of the petition. The Office has reviewed the medical records and letters from petitioner's treating physicians. While both petitioner and his wife have clearly suffered many hardships, the extent of incapacitation throughout the entire period in question is not clear. The letters provided by the treating physician(s) do not state with specificity that petitioner's medical condition was of such a nature and degree as to render him unable to conduct business (e.g., correspond with the Office) during the entire period from the last day the maintenance fee could have been paid on July 14, 2006, to the filing of the petition. Rather, the letters make broad statements as to the duration and degree of petitioner's medical incapacitation. The Office notes that if there were periods of time between July 14, 2006, and the filing of the petition, that petitioner was capable of corresponding with the Office petitioner would be unable to demonstrate that the delay was unavoidable.

In summary, petitioner has not shown that the delay in timely paying the maintenance fees was unavoidable. Therefore, the petition is dismissed.

Petitioner should note that if this petition under 37 CFR 1.378(b)/(e) is not renewed, or if renewed and not granted, petitioner may obtain a refund of the maintenance fees and post-expiration surcharge. The \$400.00 petition fee for seeking further reconsideration is not refundable

Any request for refund should be in writing to the following address:

Mail Stop 16
Director of the US Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

A copy of this decision should accompany petitioner's request.

The Office again notes that the address listed on the petition differs from the correspondence address of record. As a courtesy, the Office is mailing petitioner a copy of this communication at the address on the petition. If petitioner would like future correspondence directed to him, petitioner must submit a change of correspondence address. The appropriate form (PTO/SB/123) is attached.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

CHANGE OF CORRESPONDENCE ADDRESS Patent

Address to:
Mail Stop Post Issue
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Number

Issue Date

Application Number

Filing Date

First Named Inventor

Attorney Docket
Number

Please change the Correspondence Address for the above-identified patent to:

☐

The address associated with Customer Number:

OR

☐Firm or
Individual Name

Address

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This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

This form will not affect any "fee address" provided for the above-identified patent. To change a "fee address" use the "Fee Address Indication Form" (PTO/SB/47).

I am the:

☐

Patentee.

☐

Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☐

Attorney or agent of record. Registration Number _____

Signature

Typed or
Printed Name

Date

Telephone

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐

*Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Post Issue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: _____

Application Number: _____

Issue Date: _____

Filing Date: _____

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____,
original filing date _____.

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____.

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date_____
Signature_____
Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ _____ (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ _____

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☐ Send refund check**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED._____
Signature(s) of Petitioner(s)_____
Date_____
Typed or printed name(s)_____
Registration Number, if applicable_____
Address_____
Telephone Number_____
Address**ENCLOSURES:**

- ☐ Maintenance Fee Payment
- ☐ Statement why maintenance fee was not paid timely
- ☐ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☐ Other: _____

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

Signature

Date

Type or printed name

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

(Please attach additional sheets if additional space is needed)

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
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5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.